

DOCKET FILE COPY
ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL ROOM

MAY 11 4 17 PM '94

MM Docket No. 94-40 ✓

BY

In the Matter of

Amendment of Section 73.202(b) RM-8456
Table of Allotments,
FM Broadcast Stations.
(Bamberg, South Carolina)

Channel No.

| City | Present | Proposed |
|-------------------------|---------|----------|
| Bamberg, South Carolina | 221A | 239A |

NOTICE OF PROPOSED RULE MAKING

Adopted: April 26, 1994;

Released: May 12, 1994

Comment Date: June 27, 1994

Reply Comment Date: July 12, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Branch Communications ("petitioner"), licensee of Station WWBD(FM), Channel 221A, Bamberg, South Carolina, proposing the substitution of Channel 239A for Channel 221A at Bamberg, and the modification of Station WWBD(FM)'s license accordingly. Petitioner states that it will apply for the channel, if allotted.

2. In support of its proposal, petitioner states that at its presently licensed site, Station WWBD(FM) does not meet the Commission's spacing requirements for operation of full FM Class A facilities at 6.0 kilowatts with an antenna height of 100 meters above the average terrain. However, petitioner claims that the substitution of Channel 239A for Channel 221A at Bamberg would enable Station WWBD(FM) to operate at 6.0 kilowatts and serve a larger area, thereby increasing the number of broadcast signals available to the public in the area, and thus promoting efficient use of the spectrum. Petitioner also states that Channel 239A can be substituted for Channel 221A at Bamberg at its presently licensed site.

3. We believe the public interest would be served by proposing the substitution of Channel 239A for Channel 221A, since it would enable Station WWBD(FM) to provide Bamberg with an improved FM service. An engineering analysis has confirmed that Channel 239A can be allotted to Bamberg in compliance with the Commission's minimum distance separation requirements at the petitioner's (presently licensed site).¹ As requested, we also propose to modify petitioner's license for Station WWBD(FM) to specify operation on Channel 239A. In addition, we will not accept competing expressions of interest for the use of Channel 239A at Bamberg because the procedures outlined

in *Modification of FM and TV Licenses*, 98 FCC 2d 916 (1984) and Section 1.420(g) of the Commission's rules, do not apply in this case since no upgrade in facilities is contemplated.²

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before June 27, 1994, and reply comments on or before July 12, 1994, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

William J. Pennington, III
Post Office Box 2506
Pawleys Island, South Carolina 29585
(Counsel for Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be

¹ The coordinates for Channel 239A at Bamberg are North Latitude 33-18-50 and West Longitude 81-04-43.

² The Commission considers channels of the same class to be equivalent unless showings have been made that a station can-

not be constructed for reasons such as environmental consequences or air hazards. *See Vero Beach, Florida*, 3 FCC Rcd 1049 (1988), *rev. denied*, 4 FCC Rcd 2184, 2185 (1989).

served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties

may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.